

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROYAL YATES,	)	
	)	
Plaintiff(s),	)	No. C05-1510 BZ
	)	
v.	)	
	)	
GunnAllen FINANCIAL and CURT	)	<b>ORDER DENYING PLAINTIFF'S</b>
WILLIAMS,	)	<b>MOTION FOR ATTORNEYS' FEES</b>
	)	
Defendant(s).	)	
_____	)	

Following a jury verdict in plaintiff's favor, plaintiff moved for attorneys' fees under California Civil Code § 1717. Plaintiff relies on the following provisions in his contracts with defendant GunnAllen Financial ("GunnAllen"):

I [plaintiff] am liable for payment upon demand of any debit balance or other obligation owed in any of my accounts or any deficiencies following a whole or partial liquidation, and I agree to satisfy any such demand or obligation. Interest will accrue on any such deficiency at prevailing margin rates until paid. I agree to reimburse my Broker/Dealer and NFS for all reasonable costs and expenses incurred in the collection of any debit balance or unpaid deficiency in any of my brokerage accounts, including, but not limited to, attorneys fees.

1 Margin Account Agreement, Motion 1:8-12.

2 Regarding any margin transactions I may make and  
3 supplementing the terms and conditions of my  
4 Margin Account Agreement, in the event I do not  
5 meet your margin calls promptly, you are  
6 authorized in your sole discretion, and without  
7 notification to me, to take any and all steps  
8 necessary to protect yourself in connection with  
9 put or call transactions made for my account,  
10 including without limitation the right to buy or  
sell short exempt, for my account and risk any  
part or all of the shares represented by options  
endorsed by you for my account, or to buy, sell or  
exercise any put or call options you may deem  
necessary to fully protect yourself. Any and all  
losses and expenses, including attorneys' fees  
incurred by you in this connection will be  
reimbursed by me.

11 Option Account Agreement, Motion 1:14-20.

12 Although both these provisions run in GunnAllen's favor,  
13 § 1717 makes such provisions bilateral and construes them as  
14 applying to the entire contract.

15 The flaw in plaintiff's motion is that he did not sue  
16 defendants for breach of either of these contracts. The  
17 complaint alleged four claims. The first two were non-  
18 contractual claims for churning and securities fraud. These  
19 claims were presented to the jury. The third claim was for  
20 breach of fiduciary duty and arguably was founded on the  
21 contractual relationship between the parties. However,  
22 plaintiff elected not to present this claim to the jury and  
23 it is not clear if it was ever prosecuted. The fourth claim  
24 was for breach of an implied contract not to charge excessive  
25 commissions. The jury was instructed, at the request of both  
26 parties, that "plaintiff claims that there was no written or  
27 oral contract concerning the amount he would be charged" by  
28 defendants. Final Jury Instr. 22 [doc # 48]. The jury was

1 not asked to and did not return a separate verdict on this  
2 claim. To the extent the jury found an implied contract not  
3 to charge excessive commissions, this contract did not  
4 contain an attorneys' fee provision.

5 The California Supreme Court has consistently held that:

6 [S]ection 1717 applies only to actions that contain  
7 at least one contract claim [citations omitted].  
8 If an action asserts both contract and tort or  
9 other noncontract claims, section 1717 applies only  
to attorney fees incurred to litigate the contract  
claims.

10 Santisas v. Goodin, 17 Cal.4th 599, 615 (1998).

11 Applying § 1717 as interpreted by the California Supreme  
12 Court, which this court must do in a diversity action,<sup>1</sup> to the  
13 churning and breach of implied contract claims presented to  
14 the jury, I conclude that neither is a contract claim of the  
15 sort that would permit plaintiff to obtain attorneys' fees  
16 under California Civil Code § 1717.

17 **IT IS THEREFORE ORDERED** that plaintiff's motion for  
18 attorneys' fees is **DENIED**.

19 Dated: June 28, 2006

20 

21 Bernard Zimmerman  
22 United States Magistrate Judge

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27 \_\_\_\_\_  
28 <sup>1</sup> See MRO Communs., Inc. v. Am. T & T Co., 197 F.3d  
1276, 1281 (9th Cir. 1999).